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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,756	10/10/2001	Yelena Loginova	967.061US1	2366
21186	7590	07/03/2007		
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER HUI, SAN MING R	
			ART UNIT 1617	PAPER NUMBER
			MAIL DATE 07/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/975,756

Applicant(s)

LOGINOVA ET AL.

Examiner

San-ming Hui

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7, 9-12 and 14-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 7, 9-12 and 14-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's amendments filed April 12, 2007 have been entered. The cancellation of claim 6 is acknowledged.

Claims 1-3, 7, 9-12, and 14-26 are pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 7, 9-12, and 14-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,653,969 ('969) in view of US 5,804,173 ('173), '173 is of record.

'969 teaches a low residue hair care product, such as gel, containing copolymer of methyl methacrylate and ethyl acrylate (See col. 7, lines 44 and col.10, line 39). '969 teaches the A monomer unit can be present in a range of 50-85% and monomer B as 15-40% (See col. 6, second to last paragraph and col. 8, first paragraph). Hydrocarbon such as isoparaffin is taught as useful as solvent (See col. 12, lines 9-14 for example).

Art Unit: 1617

'969 also teaches that Ceteareth-20, dimethicone, isododecane can be used (See col. 25-28, Examples 3-10).

'969 does not expressly teach the surfactant as ethoxylated alcohol. '969 does not expressly teach the additional agent such as sunscreen is added into the low-residue hair product. '969 does not expressly teach the herein claimed ratio between the monomer unit of acrylate copolymer as 7.5-8.5 : 1.8-2.3.

'173 teaches a easy-off hair product that can incorporate the surfactant can be ethoxylated alcohols (See col. 25, lines 11-12). '173 teaches a mixture useful for cosmetic composition for hair and skin care comprising a copolymer and carriers. Carriers included isoparaffin and cyclomethicone. Solvents or carriers can be comprised in the hair care composition in a range of about 10-98% (See col. 15-16). '173 teaches the hair care products can be formulated into various known formulations such as gel (See col. 15-16). About 75% of isoparaffin and around 60% of cyclomethicone are used to dissolved the copolymer in examples 11 and 17, polymer-solvent mixtures. '173 also teaches the herein claimed surfactants such as Steareth-20 and Ceteareth-20 (See col.25, lines 15-26). '173 also teaches the copolymer formulation may be used as a component for gels, lotions, and sunscreen (See col. 15, lines 48-67, col. 19, lines48 – col. 20, line27). '173 also teaches such composition having an improved "wash-out" characteristics.

It would have been obvious to one of ordinary skill in the art at the time of invention to employ the ethoxylated alcohol surfactant and sunscreen agent taught in '173 into the hair composition of '969. It would have been obvious to one of ordinary skill

Art Unit: 1617

in the art at the time of invention to employ the herein claimed ratio of monomers in the hair product of '969.

One of ordinary skill in the art would have been motivated to employ the ethoxylated alcohol surfactant and sunscreen agent taught in '173 into the hair composition of '969. It is clear that both of the easily rinse-off hair products of '969 and '173 are similar. Therefore, the surfactant and the sunscreen agents useful for hair composition of '173 should also be useful for hair composition of '969 since the employment of these agents would not affect the rinse-off properties of the hair product of '969. One of ordinary skill in the art would have been motivated to formulate and employ the herein claimed copolymer with the herein claimed weight ratio as 7.5-8.5 : 1.8-2.3 since the optimization of result effect parameters (dosage range, dosing regimens) is obvious as being within the skill of the artisan, absent evidence to the contrary.

Response to Arguments

Applicant's arguments filed April 12, 2007 averring '173 not teaching the herein claimed ratio between monomers have been fully considered but they are not persuasive. The examiner notes that the arguments filed April 12, 2007 almost exclusively address the alleged deficiencies of '173. It is noted that '969 teaches the monomer units can be in a ratio of 50-85 : 15-40, which encompass the ratio recited. The optimization of the result effect parameters (dosage range, dosing regimens) is

obvious as being within the skill of the artisan, absent showing the criticality of the herein claimed ratio between the two monomers.

Applicant's arguments filed April 12, 2007 averring '173's failure to teach the herein claimed copolymer have been considered, but are not found persuasive. '969 clearly teaches the copolymer with the herein claimed monomers. Taking the references as a whole, the claims are considered properly rejected under 35 USC 103(a).

Applicant's arguments filed April 12, 2007 averring the cited prior art's failure to address the special "wash off" features have been considered, but are not found persuasive since such features are directed to unclaimed limitations. Unclaimed limitation is considered moot.


Applicant's remarks with regard to the percentage of cyclomethicone are believed been addressed above. The examiner believes the rejection under 35 USC 103(a) is clarified.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to San-ming Hui whose telephone number is (571) 272-0626. The examiner can normally be reached on Mon 9:00 to 1:00, Tu - Fri from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, PhD., can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


San-ming Hui
Primary Examiner
Art Unit 1617